

AMENDED IN SENATE JULY 1, 2005

AMENDED IN SENATE JUNE 22, 2005

AMENDED IN ASSEMBLY MARCH 31, 2005

CALIFORNIA LEGISLATURE—2005–06 REGULAR SESSION

ASSEMBLY BILL

No. 843

Introduced by Assembly Member Nunez
(Coauthor: Assembly Member Laird)

February 18, 2005

An act to amend Section 22251 of, and to add Section 22253.1 to, the Business and Professions Code, relating to tax preparers.

LEGISLATIVE COUNSEL'S DIGEST

AB 843, as amended, Nunez. Tax preparers.

Existing law requires a tax preparer to maintain a bond in favor of, and payable to, the people of the State of California, for each individual preparing tax returns for another person. Existing law requires a tax preparer to provide a customer with certain information in writing prior to rendering any tax preparation services. A willful violation of the laws regulating tax preparers is a crime.

This bill would prohibit a tax preparer who advertises the availability of a refund anticipation loan from representing the loan as a client's actual refund. The bill would require a tax preparer that offers to ~~make or~~ facilitate, or who ~~makes or~~ facilitates, a refund anticipation loan to a client to ~~provide the client with a disclosure and statement satisfying specified requirements~~ *display a specified fee schedule. The bill would require a tax preparer that offers to facilitate a refund anticipation loan to provide the client with a specified written disclosure prior to the client's completion of the refund*

anticipation loan application. The bill would also require a tax preparer to provide the client with specified information, in either written or electronic form, prior to the client's consummation of the refund anticipation loan transaction.

Because a violation of the bill's requirements would be a crime, the bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 22251 of the Business and Professions
- 2 Code is amended to read:
- 3 22251. For the purposes of this chapter, the following words
- 4 have the following meanings:
- 5 (a) (1) Except as otherwise provided in paragraph (2), "tax
- 6 preparer" includes:
- 7 (A) A person who, for a fee or for other consideration, assists
- 8 with or prepares tax returns for another person or who assumes
- 9 final responsibility for completed work on a return on which
- 10 preliminary work has been done by another person, or who holds
- 11 himself or herself out as offering those services. A person
- 12 engaged in that activity shall be deemed to be a separate person
- 13 for the purposes of this chapter, irrespective of affiliation with, or
- 14 employment by, another tax preparer.
- 15 (B) A corporation, partnership, association, or other entity that
- 16 has associated with it persons not exempted under Section 22258,
- 17 which persons shall have as part of their responsibilities the
- 18 preparation of data and ultimate signatory authority on tax
- 19 returns or that holds itself out as offering those services or having
- 20 that authority.
- 21 (2) Notwithstanding paragraph (1), "tax preparer" does not
- 22 include an employee who, as part of the regular clerical duties of

1 his or her employment, prepares his or her employer's income,
2 sales, or payroll tax returns.

3 (b) "Tax return" means a return, declaration, statement, refund
4 claim, or other document required to be made or filed in
5 connection with state or federal income taxes or state bank and
6 corporation franchise taxes.

7 (c) An "approved curriculum provider," for purposes of basic
8 instruction as described in subdivision (a) of Section 22255, and
9 continuing education as described in subdivision (b) of Section
10 22255, is one who has been approved by the council as defined in
11 subdivision (d). A curriculum provider who is approved by the
12 tax education council is exempt from Chapter 7 (commencing
13 with Section 94700) of Part 59 of Division 10 of the Education
14 Code.

15 (d) "Council" means the California Tax Education Council
16 that is a single organization made up of not more than one
17 representative from each professional society, association, or
18 other entity operating as a nonprofit corporation that chooses to
19 participate in the council and that represents tax preparers,
20 enrolled agents, attorneys, or certified public accountants with a
21 membership in California of at least 200 for the last three years,
22 and not more than one representative from each for-profit tax
23 preparation corporation that chooses to participate in the council
24 and that has at least 200 employees and has been operating in
25 California for the last three years. The council shall establish a
26 process by which two individuals who are tax preparers pursuant
27 to Section 22255 are appointed to the council with full voting
28 privileges to serve terms as determined by the council, with their
29 initial terms being served on a staggered basis. A person exempt
30 from the requirements of this chapter pursuant to Section 22258
31 is not eligible for appointment to the council, other than an
32 employee of an individual in an exempt category.

33 (e) "Client" means an individual for whom a tax preparer
34 performs or agrees to perform tax preparation services.

35 (f) "Refund anticipation loan" means a loan, whether provided
36 by the tax preparer or another entity, such as a financial
37 institution, in anticipation of, and whose payment is secured by,
38 a client's federal or state income tax refund or by both.

39 (g) "*Refund anticipation loan fee schedule*" means a list or
40 table of refund anticipation loan fees that includes three or more

1 *representative refund anticipation loan amounts. The schedule*
2 *shall separately list each fee or charge imposed, as well as a*
3 *total of all fees imposed, related to the making of a refund*
4 *anticipation loan. The schedule shall also include, for each*
5 *representative loan amount, the estimated annual percentage*
6 *rate calculated under the guidelines established by the federal*
7 *Truth in Lending Act (15 U.S.C. Sec. 1601 and following).*

8 SEC. 2. Section 22253.1 is added to the Business and
9 Professions Code, to read:

10 22253.1. (a) Any tax preparer who advertises the availability
11 of a refund anticipation loan shall not directly or indirectly
12 represent the loan as a client's actual refund. Any advertisement
13 that mentions a refund anticipation loan shall state conspicuously
14 that it is a loan and that a fee or interest will be charged by the
15 lending institution. The advertisement shall also disclose the
16 name of the lending institution.

17 (b) Every tax preparer who offers to ~~make or~~ facilitate, or who
18 ~~makes or~~ facilitates, a refund anticipation loan to a client shall
19 display a schedule showing the current fees for refund
20 anticipation loans facilitated at the office, for the electronic filing
21 of the client's tax return, for setting up a refund account, and any
22 other related activities necessary to receive a refund anticipation
23 loan. The fee schedule shall also include a statement indicating
24 that the client may have the tax return filed electronically without
25 also obtaining a refund anticipation loan.

26 (c) The postings required by this section shall be made in not
27 less than 28-point type on a document measuring not less than 16
28 by 20 inches. The postings required in this section shall be
29 displayed in a prominent location at each office where any tax
30 preparer is offering to ~~make or~~ facilitate or ~~making or~~ facilitating
31 a refund anticipation loan.

32 ~~(d) For refund anticipation loans, a tax preparer shall provide~~
33 ~~the client with a written notice on a single sheet of paper,~~
34 ~~separate from any other document or writing, containing all of~~
35 ~~the following:~~

36 ~~(1) A legend, centered at the top on the single sheet of paper,~~
37 ~~in bold, capital letters, and in 28-point type stating "NOTICE."~~

38 ~~(2) The following verbatim statements:~~

39 ~~"You are not required to enter into this refund anticipation loan~~
40 ~~agreement merely because you have received this information."~~

~~“This is a loan. The estimated annual percentage rate (APR), based on the estimated average payment period, is (fill in the estimated APR).”~~

~~“Your refund will be used to repay the loan. As a result, the amount of your refund will be reduced by (fill in appropriate dollar amount) for fees, interest, and other charges.”~~

~~“You can get the full amount of your refund in about 10-14 days if you file your return electronically and have the Internal Revenue Service send your refund to your own bank account, or in about 21 days if you file your return by mail. If you do not have a bank account, you may wish to consider getting one.”~~

~~“If you choose to take this loan and your refund is delayed, you may have to pay additional interest. If the refund is received in your bank account in less than the time we expect the refund to be received from the Internal Revenue Service, you will not receive any refund in fees or charges.”~~

~~(3) The name and address of the lender.~~

~~(4) The estimated time the loan proceeds will be made available to the client if the loan is approved.~~

~~(e) All statements required in paragraph (2) of subdivision (d) shall be in a minimum of 12-point type, with at least a double space between each line in the statement and three spaces between each statement.~~

~~(f) A blank written notice shall be provided to the client by any tax preparer who offers to make or facilitate or who makes or facilitates a refund anticipation loan upon being notified by the client that the client wishes to apply for a refund anticipation loan.~~

(d) (1) Prior to the client’s completion of the refund anticipation loan application, a tax preparer that offers to facilitate a refund anticipation loan shall provide to the client a clear, written disclosure containing all of the following information:

(A) The refund anticipation loan fee schedule.

(B) That a refund anticipation loan is a loan and is not the client’s actual income tax refund.

(C) That the taxpayer can file an income tax return electronically without applying for a refund anticipation loan.

(D) The average amount of time, according to the Internal Revenue Service, within which a taxpayer who does not obtain a

1 refund anticipation loan can expect to receive a refund if the
2 taxpayer's return is filed or mailed as follows:

3 (I) Filed electronically and the refund is deposited directly
4 into the taxpayer's bank account or mailed to the taxpayer.

5 (ii) Mailed to the Internal Revenue Service and the refund is
6 deposited directly into the taxpayer's bank account or mailed to
7 the taxpayer.

8 (E) That the Internal Revenue Service does not guarantee that
9 it will pay the full amount of the anticipated refund and it does
10 not guarantee a specific date that a refund will be deposited into
11 the taxpayer's bank account or mailed to the taxpayer.

12 (F) That the client is responsible for the repayment of the
13 refund anticipation loan and the related fees in the event that the
14 tax refund is not paid or paid in full.

15 (G) The estimated time within which the loan proceeds will be
16 paid to the client if the loan is approved.

17 (H) The fee that will be charged, if any, if the client's loan is
18 not approved.

19 (2) Prior to the client's consummation of the refund
20 anticipation loan transaction, a tax preparer that facilitates a
21 refund anticipation loan shall provide to the client, in either
22 written or electronic form, the following information:

23 (A) The estimated total fees for obtaining the refund
24 anticipation loan.

25 (B) The estimated annual percentage rate for the client's
26 refund anticipation loan, using the guidelines established under
27 the federal Truth in Lending Act (15 U.S.C. Sec. 1601 and
28 following).

29 (C) A comparison of the various costs, fees, and finance
30 charges, if applicable, associated with receiving a refund by mail
31 or by direct deposit directly from the Internal Revenue Service, a
32 refund anticipation loan, a refund anticipation check, or any
33 other refund settlement options facilitated by the tax preparation
34 service.

35 ~~(g) All documents referenced in this section, including any~~
36 ~~advertisements, schedules, postings, or notices,~~

37 (e) This section shall comply with the language requirements
38 set forth in Section 1632 of the Civil Code.

39 ~~(h) Before a client enters into a refund anticipation loan~~
40 ~~agreement, the tax preparer who is making or facilitating the~~

1 ~~refund anticipation loan shall provide the filled-in written notice~~
2 ~~described in subdivision (d) to the client.~~

3 ~~(i)~~

4 ~~(f)~~ Any tax preparer who offers to ~~make or~~ facilitate, or who
5 ~~makes or~~ facilitates, a refund anticipation loan may not engage in
6 any of the following activities:

7 (1) Requiring a client to enter into a loan arrangement in order
8 to complete a tax return.

9 (2) Misrepresenting a material factor or condition of a refund
10 anticipation loan.

11 (3) Failing to process the application for a refund anticipation
12 loan promptly after the client applies for the loan.

13 (4) Engaging in any transaction, practice, or course of business
14 that operates a fraud upon any person in connection with a refund
15 anticipation loan.

16 ~~(5) Facilitating a refund anticipation loan for which the refund~~
17 ~~anticipation loan fee is different than the fee posted.~~

18 SEC. 3. No reimbursement is required by this act pursuant to
19 Section 6 of Article XIII B of the California Constitution because
20 the only costs that may be incurred by a local agency or school
21 district will be incurred because this act creates a new crime or
22 infraction, eliminates a crime or infraction, or changes the
23 penalty for a crime or infraction, within the meaning of Section
24 17556 of the Government Code, or changes the definition of a
25 crime within the meaning of Section 6 of Article XIII B of the
26 California Constitution.